

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13404, of M and Potomac Streets Associates Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations for variances from the rear yard requirements (Sub-section 3301.1 and 7615.2) and the side yard requirements (Sub-section 3305.4) to permit the construction of a row dwelling which does not share a common division wall with another building on a theoretical lot in an R-3 District at the premises 3276 Prospect Street, N.W., (Square 1206, part of Lot 40).

HEARING DATE: January 21, 1981
DECISION DATE: February 4, 1981

FINDINGS OF FACT:

1. The subject property is located on the south side of Prospect Street between 33rd and Potomac Streets, N.W. It is in an R-3 District at premises known as 3276 Prospect Street, N.W.
2. The site is rectangular in shape. It consists of approximately 1,642 square feet of land area that is presently vacant and unimproved.
3. The applicant proposes to construct a three-story row dwelling on the site. A row dwelling is a use permitted as a matter of right in the R-3 District.
4. The proposed development of the lot is part of the "Eton" development which is currently under construction. That development consists of approximately twenty-eight townhouses which predominantly front on Potomac and M Streets. The lot which is the subject of this application is the sole R-3 lot included in the over-all development. The remainder of the property is zoned C-2-A.
5. The subject lot, as previously described, contains 1,642 square feet of land area. The Zoning Regulations require that a minimum lot area of 2,000 square feet be provided for an R-3 row dwelling. Thus, a variance of 358 square feet from the lot area requirements is required.
6. The applicant is providing a rear yard of fifteen feet. A twenty foot yard is required, and a variance of five feet is requested.

7. Sub-section 3305.4 of the Regulations requires that a side yard be provided for a single family dwelling in an R-3 District if the building does not share a common division wall with another building. The subject building is freestanding. It is thus required to provide an eight foot side yard on each side. No side yards are provided, and a variance is requested.

8. To the north of the subject site is Prospect Street followed by two story row dwellings in the R-3 District. To the east are the rear yards of two row dwellings which front on Potomac Street in the R-3 District. To the south is the new residential development described above in Finding number 4 of this Order, which is located in a C-2-A zone district. To the west are rear yards of row dwellings which front on 33rd Street, and are also located in the R-3 District.

9. The subject lot is located within the boundaries of the Georgetown Historic District. Development in that District is subject to review by the Commission of Fine Arts.

10. The applicant's original development plan for the "Eton" project provided for a park on the lot which is the subject of this application. All of the development rights of the property were used on the C-2-A portion of the site. At the request of the Commission of Fine Arts, the applicant revised the plan to provide a single-family dwelling built from lot line-to-lot line in order to screen the remaining development from the Prospect Street frontage.

11. The lot area of abutting and nearby properties zoned R-3 varies. For example, to the north lots 804 and 824 consists of 2,654 and 2,150 square feet, respectively. To the east, abutting lots 830 and 831 consist of 1,983 and 1,960 square feet, respectively. To the west, abutting lots 815 and 814 consist of 1,086 and 1,089 square feet, respectively. The subject lot was subdivided prior to the adoption of the present Zoning Regulations in 1958.

12. The subject row dwelling is proposed to be constructed of brick with a metal seam roof. The outside building dimensions are twenty-three feet by 42.8 feet. The dwelling consists of three floors and a walk out basement, four bedrooms, five baths, living, dining, recreation and library rooms, kitchen and four fireplaces. There is a rear yard patio included in the plans.

13. In order to achieve the F.A.R. that was lost in redesigning the project to meet the approval of the Commission of Fine Arts, the applicant designed a structure which did not meet the minimum rear yard requirements. The unit would not be marketable if it were less than the existing twenty-three feet in depth. The rear of the lot has a sloping topography which would present practical difficulty in utilizing the rear yard without the proposed terraced patio.

14. A five foot, four inch wide exterior passageway runs along the eastern property line which gives pedestrian access to the dwellings being constructed to the south. This passageway is built on top of the subject dwelling's basement level and below the second floor, thereby reducing the first floor area. This passageway is located in the required eight foot wide side yard. The western wall of the building is proposed to be built on the lot line, without the required eight foot side yard.

15. The design of the structure from lot line to lot line, as proposed, is typical of the Georgetown architecture. The building as designed, will not affect light and air of surrounding properties.

16. The Office of Planning and Development by report dated January 12, 1981, and testimony at the time of public hearing, recommended approval of the application on the grounds that the requested variances will not cause detriment to the public good, and will generally be in character with existing development in the neighborhood. The OPD found that to prohibit development of the lot based on its substandard lot size as subdivided prior to the 1958 adoption of the Zoning Regulations would unfairly prohibit the owner's use of this property, and substantially limit the amount of interior living space. The OPD was of the view that the side yards would serve no meaningful separation of structures and would not be a logical inclusion in this instance. The passageway would, however, provide pedestrian access to Prospect Street for the residents living to the rear of the subject site. The OPD reported that this would be an attractive public amenity. The rear yard variance of five feet, given the sloping topography, would present practical difficulty in utilizing the rear for recreation without the terraced patio as proposed. The Board agrees.

17. There was no written report of Advisory Neighborhood Commission - 3A received in the record on this application.

18. A neighboring property owner, Mrs. Dorothea J. Capello, testified that the position of the affected Single Member District ANC3A was vacant at the time of hearing, and that she was selected as spokesperson to represent the views of the surrounding community. She testified that the community supported the variances to construct a dwelling, but opposed the construction of a passageway leading to the C-2-A development of the site.

19. As to the concerns about the passageway, the Board knows of no provisions of the Zoning Regulations which would limit pedestrian access across the subject property. The Board further finds that, if the application for variances were denied, and the development constructed as originally planned, the site of the building would be an open park area, providing free access to the remainder of the site.

CONCLUSIONS OF LAW AND OPINION:


Based on the findings of fact and the evidence of record, the Board concludes that the requested rear yard, side yard and lot area variances are area variances, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the recommendations of the Commission of Fine Arts make strict compliance with the Zoning Regulations unduly burdensome for the applicant. The split-zoning, shape, size and depth of the property are irregular and impose unusual design limitations. The foregoing circumstances create an exceptional condition. The Board further concludes that the strict application of the regulations would create a practical difficulty for the owner, in that the building which would result would not conform to Georgetown architecture, would be poorly designed and functionally unattractive. The Board is cognizant of the fact that this was a lot of record, prior to the adoption of the 1958 Zoning Regulations.

The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore ORDERED that the application is GRANTED.

VOTE: 3-0 (William F. McIntosh, Connie Fortune and Charles R. Norris to GRANT; Douglas J. Patton ABSTAINED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 4 MAY 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13404, Motion by opposition, dated May 14, 1981, for Reconsideration in the application of M and Potomac Streets Associates Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the rear yard requirements (Sub-sections 3304.1 and 7615.2), the lot area requirements (Sub-section 3301.1 and 7615.2) and the side yard requirements (Sub-section 3305.4) to permit the construction of a row dwelling which does not share a common division wall with another building on a theoretical lot in an R-3 District at the premises 3276 Prospect Street, N.W., (Square 1206, Part of Lot 40).

HEARING DATE: January 21, 1981

DECISION DATE: February 4, 1981

STATUS: The Board GRANTED the application by a vote of 3-0 (William F. McIntosh, Connie Fortune and Charles R. Norris to GRANT; Douglas J. Patton ABSTAINED).

FINAL DATE OF ORDER: May 4, 1981

ORDER

The opposition, Dorothea J. Capello, filed a timely Motion for Reconsideration. The motion alleges that the BZA did not exercise an independent, expert opinion in its Findings of Fact in that the Board almost verbatim incorporated the proposed Findings submitted by the applicant. The Motion also alleged that there were errors in the Board's Findings to the degree that much broader uses of the land were allowed than those uses which were requested at the public hearing of January 21, 1981. Upon consideration of the Order, the motion for Reconsideration and the reply of the applicant thereto, the Board concludes that it committed no error in deciding the application, even assuming the Board incorporated the applicant's findings for which the Board has full justification to do so. The Board concludes that the issue of the pedestrian passageway was thoroughly heard at the public hearing and the opposition is offering no evidence not previously considered by the Board. Accordingly, it is ORDERED that Motion for Reconsideration is DENIED.

VOTE: 3-0 (William F. McIntosh, Connie Fortune and Douglas J. Patton to DENY; Charles R. Norris not present, not voting).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 16 JUL 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."